

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING
ARM 23.12.1203 through 23.12.1208,) ON PROPOSED AMENDMENT
23.12.1301, and 23.12.1411 through)
23.12.1413 pertaining to Montana Law)
Enforcement Academy Preservice)
Applicants)

TO: All Concerned Persons

1. On January 15, 2014, at 10:00 a.m., the Montana Department of Justice will hold a public hearing in the auditorium of the Scott Hart Building, 303 North Roberts, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Justice will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on January 2, 2014, to advise us of the nature of the accommodation that you need. Please contact Jaime Burkhalter, Department of Justice, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401; telephone (406) 444-2026; Montana Relay Service 711; fax (406) 444-3549; or e-mail jburkhalter@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

23.12.1203 BASIC COURSE ATTENDANCE REQUIREMENTS FOR
PRESERVICE APPLICANTS (1) Preservice applicants are persons not employed
as full-time or part-time ~~public safety~~ peace officers. Preservice applicants shall be
selected to attend the ~~MLEA basic course~~ Montana Law Enforcement Academy Law
Enforcement Officer Basic Course based on their ability to meet minimum
qualifications. This includes successfully completing the pretest screening of their
application, written and physical ability test, oral interview, background investigation,
and criminal history, investigation, and test screening. Successful applicants will be
ranked in accordance with ARM 23.12.1207. Scheduled attendance by the
successful applicants to the ~~basic course~~ Law Enforcement Officer Basic Course will
be by order of rank from the applicant list and by course availability. Preservice
applicants scheduled to attend the ~~basic course~~ Law Enforcement Officer Basic
Course shall receive reporting instructions and other information from the academy
administrator or the academy administrator's designee.

AUTH: 44-10-202, MCA
IMP: 44-10-301, MCA

RATIONALE AND JUSTIFICATION: This amendment is reasonably necessary to clarify the application and selection process for preservice applicants to the Montana Law Enforcement Academy (MLEA) basic course for law enforcement officers. This amendment removes the reference to public safety officers because the preservice programs only apply to law enforcement peace officers; there are no preservice programs that apply to public safety officers.

23.12.1204 MINIMUM QUALIFICATIONS FOR PRESERVICE TESTING AND PRETEST SCREENING (1) and (1)(a) remain the same.

(b) applicants must possess a valid ~~drivers~~ driver's license issued by any state.

(2) and (3) remain the same.

AUTH: 44-10-202, MCA

IMP: 44-10-301, MCA

RATIONALE AND JUSTIFICATION: This amendment is reasonably necessary to make a minor grammatical change to promote consistency throughout the rules. No substantive changes are intended by this amendment.

23.12.1205 PRESERVICE TESTING PROCEDURES (1) The preservice applicant tests shall be administered by the academy and/or an approved designee, and shall be conducted whenever it is deemed necessary by the academy administrator or the academy administrator's designee. Applicants shall be notified of the test date, time, and location at least thirty days in advance of the test.

(2) The preservice applicant tests shall consist of a written examination that measures general aptitudes, reading, and writing skills. ~~A copy of the test used will be filed annually with POST.~~

AUTH: 44-10-202, MCA

IMP: 44-10-301, MCA

RATIONALE AND JUSTIFICATION: This amendment is reasonably necessary to remove the provision requiring the MLEA to file copies of tests with the Public Safety Officer Standards and Training Council (POST). POST has no oversight responsibilities regarding MLEA admission requirements and preservice applicants, and thus, there is no need for MLEA to file copies with POST. Additionally, removing this provision reduces potential concerns regarding the permitted use of testing materials, given that some testing instruments and materials are administered and copyrighted by third parties.

23.12.1206 PRESERVICE TEST SCREENING PROCEDURES

(1) Preservice test screening shall be conducted for those applicants who have successfully completed the testing procedures, who have been ranked according to the ranking procedures, and in accordance with the space available in the ~~basic courses~~ Law Enforcement Officer Basic Courses to be presented by the

academy in the year following the test date. The availability of space shall be determined by the academy administrator or the academy administrator's designee.

(2) All preservice applicants shall be required to provide two sets of classifiable fingerprints ~~and a photograph of not less than 1 1/2 inches by 1 1/2 inches of the applicant's full face, head and shoulders at the time an application is submitted.~~

(3) The academy administrator or the academy administrator's designee shall conduct criminal history, prior employment, and character and background checks on each applicant selected for further consideration after testing has occurred.

(a) A criminal history investigation may occur before granting an interview to a preservice applicant.

(4) An oral interview board shall be created consisting of the academy administrator or the academy administrator's designee, a representative of a county sheriff's office, a representative of a municipal police department, and a member of the general public.

(a) An alternate representative of a county sheriff's office, representative of a municipal police department, and a member of the general public will also be appointed to serve whenever a representative person is unable to attend an interview. All appointments to the board shall be made by the academy administrator or the academy administrator's designee.

(5) The oral interview board shall interview all preservice applicants who successfully pass the background checks. Applicants who fail the interview will not be considered for admission to any ~~basic course~~ Law Enforcement Officer Basic Course scheduled for the year following this process.

(6) Total possible points for applicants who pass the oral interview will be ~~fifty-five~~ 55 points. Applicants who pass will be granted from 1-55 points based upon their interview performance.

(7) remains the same.

AUTH: 44-10-202, MCA

IMP: 44-10-202, MCA

RATIONALE AND JUSTIFICATION: This amendment is reasonably necessary to clarify the application and selection process for preservice applicants to the MLEA basic course for law enforcement officers. This amendment removes the requirement that applicants provide a photograph. The department believes the photograph requirement is an unnecessary burden on applicants at this early stage in the process. This amendment also clarifies that a criminal history investigation may occur before an interview is granted. In the past, criminal history investigations sometimes occurred after an interview, and candidates who had completed a significant portion of the application process were excluded based on criminal histories. This practice led to wasted time and resources, both for the applicants and the department. This amendment addresses those concerns.

23.12.1207 RANKING OF PRESERVICE APPLICANTS FOR ELIGIBILITY TO ATTEND THE BASIC COURSE (1) through (2)(g) remain the same.

(h) an additional 15 points will be added for a ~~masters~~ master's degree;

(i) through (5) remain the same.

(6) This ranking is meant only to qualify the applicants for attending the ~~MLEA basic course~~ Montana Law Enforcement Academy Law Enforcement Officer Basic Course and is not meant to qualify these individuals for employment as peace officers ~~or public safety officers~~.

AUTH: 44-10-202, MCA

IMP: 44-10-301, MCA

RATIONALE AND JUSTIFICATION: This amendment is reasonably necessary to make minor grammatical changes to promote consistency throughout the rules. This amendment also removes the reference to public safety officers because the preservice programs only apply to law enforcement peace officers; there are no preservice programs that apply to public safety officers. This amendment removes any confusion about the applicants subject to these rules.

23.12.1208 PROCEDURES FOR REGISTRATION, ATTENDANCE, AND FEES FOR PRESERVICE APPLICANTS (1) In order of rank, preservice applicants will be given an opportunity to register for those ~~basic course~~ Law Enforcement Officer Basic Course sessions that are scheduled by the academy. Applicants shall be considered eligible to attend any ~~basic course~~ Law Enforcement Officer Basic Course session scheduled to commence within one year from the date of their ranking.

(2) Once the scheduled preservice roster is full for a particular ~~basic course~~ Law Enforcement Officer Basic Course session, applicants will be placed on a waiting list by order of rank.

(3) Registered applicants who decline to participate in a ~~basic course~~ Law Enforcement Officer Basic Course session may be required to retest, but may be allowed to reregister for another session at the discretion of the academy administrator or the academy administrator's designee.

(4) At least 30 days before a ~~basic course~~ Law Enforcement Officer Basic Course session is scheduled to begin, registered applicants will be required to complete and pass a medical examination which will be conducted by a ~~physician appointed by the academy~~ health care professional selected and paid for by the applicant.

(5) At least 30 days before a ~~basic course~~ Law Enforcement Officer Basic Course session is scheduled to begin, registered applicants will be required to provide proof of medical insurance coverage for the period of the basic course. Other final documentation required by the academy must also be provided at least 30 days in advance.

(6) ~~A \$2,000 tuition fee, together with payment for meals, room, necessary uniforms, equipment, and supplies, will be required from each preservice applicant to be paid in full by the first day of the basic course session to be attended. Proof of tuition subsidies, grants, or scholarships will be accepted in lieu of cash payment.~~ Cost for participation in the Law Enforcement Officer Basic Course Preservice Program is \$5,100 for in-state residents and \$7,100 for out-of-state residents. These fees include room and board, instructional costs, training and education

materials, and equipment and supplies. A \$300 nonrefundable deposit, which is deducted from the total cost of participation, must be paid within ten days of acceptance into the Preservice Program.

(a) For purposes of the Montana Law Enforcement Academy Preservice Program, a person is considered a Montana resident if they have resided in the state for 180 consecutive days. Applicants may be required to provide sufficient documentation to prove residency.

(7) Preservice students who leave a ~~basic course~~ Law Enforcement Officer Basic Course voluntarily or who are dismissed will be granted a tuition refund on the following basis:

(a) through (c) remain the same.

(8) At least 30 days before the starting date of a ~~basic course~~ Law Enforcement Officer Basic Course session, registered applicants will receive a packet of information that includes reporting information and the name and address of the course manager for the particular basic course session.

(9) remains the same.

AUTH: 44-10-202, MCA

IMP: 44-10-202, 44-10-301, MCA

RATIONALE AND JUSTIFICATION: This amendment removes the requirement that applicants obtain a medical examination from a MLEA-appointed physician. The department recognizes many communities have limited access to physicians and this requirement may impose a significant burden on some applicants. Further, the requirement that the physician be MLEA-approved imposes an additional, unnecessary burden on applicants, as well as the MLEA. This amendment is reasonably necessary to address these concerns and to allow applicants to obtain medical examinations from other health care professionals, such as physician's assistants.

This amendment is also reasonably necessary to address the rising costs involved in conducting a preservice program. Over the past five years, the MLEA has experienced increasing inflationary costs associated with the preservice program that warrant the tuition increase. Additionally, MLEA has seen an increase in out-of-state applicants who, upon completion of the program, will not be serving as law enforcement officers within Montana. Differentiating the costs between in-state and out-of-state applicants helps to ensure that the MLEA is able to provide a quality training program while complying with the legislative intent that the costs of training for "qualified individuals" other than law enforcement be borne by the other qualified individuals and not the state of Montana. Additionally, the differentiation in tuition and fees for in-state and out-of-state students is intended to provide an incentive to and prevent displacement of in-state students.

Based upon analysis of the past three years, the funding increase would amount to an additional \$1,000 in tuition and fees for in-state students and an additional \$3,000 in tuition and fees for out-of-state students. The cumulative effect per year would be approximately \$3,000 - \$4,000 increase in tuition and fees for in-state students.

Though the MLEA has received numerous out-of-state applications from prospective students, no out-of-state students have attended the MLEA in the last three years. Based on the numbers of preservice students over the last three years, the total number of students affected is anticipated to be 4 to 5 annually (Preservice students for last three years: 2011 = 2; 2012 = 5; 2013 = 4).

23.12.1301 RULES OF CONDUCT FOR STUDENTS ATTENDING BASIC PROGRAMS UPON THE MONTANA LAW ENFORCEMENT ACADEMY CAMPUS

(1) Students must agree in writing to accept and act in accordance with the rules as stated in the Montana Law Enforcement Academy student agreement governing their conduct and behavior while attending ~~basic-bureau~~ programs upon the Montana Law Enforcement Academy campus.

(2) through (2)(b) remain the same.

(3) The student agreement may also specify other rules and regulations that the academy administrator or the academy administrator's designee may deem as proper and necessary in order to manage the campus and courses in a safe and orderly manner.

AUTH: 44-10-202, MCA

IMP: 44-10-202, MCA

RATIONALE AND JUSTIFICATION: This amendment is reasonably necessary to clarify that the rules of conduct apply to all persons attending courses upon the MLEA campus.

23.12.1411 STUDENT ACADEMIC PERFORMANCE REQUIREMENTS FOR THE BASIC COURSE MONTANA LAW ENFORCEMENT ACADEMY COURSES (1) remains the same.

(2) ~~The total accumulative points possible for each basic course shall be filed with the POST advisory council in conjunction with the annual review of the curriculums as prescribed in ARM 23.13.304.~~ A student must meet a 90 percent attendance rating of not only the overall course but of each unit of instruction. In the Law Enforcement Officer Basic Course this includes law and criminal procedure, human behavior and social interaction, patrol operations, investigations, health and wellness, traffic enforcement, and survival skills.

AUTH: 44-10-202, MCA

IMP: 44-10-202, MCA

RATIONALE AND JUSTIFICATION: This rule is reasonably necessary to include an attendance requirement to ensure students will attend the majority of the overall course as well as the individual units of instruction. This amendment is also reasonably necessary to remove the language requiring the MLEA to file with POST. POST has no oversight responsibilities regarding MLEA admission requirements and preservice applicants, and thus, there is no need for MLEA to file the points for each basic course with POST.

23.12.1412 OTHER STUDENT PERFORMANCE MEASURES (1) through (1)(c) remain the same.

(2) Performance evaluations will be conducted on a regular basis by the academy administrator or ~~their~~ the academy administrator's designee. Performance evaluations will be summarized orally and in writing and based upon ~~the following behavioral categories that objectively reflect students' participation in Montana Law Enforcement Academy courses.~~ This may include but is not limited to the following areas:

- ~~(a) work habits;~~
- (b) remains the same, but is renumbered (a).
- ~~(c) (b) interpersonal skills; and~~
- ~~(d) motivation;~~
- ~~(e) (c) effectiveness under stress; and~~
- ~~(f) overall rating of personal qualities.~~

(3) The evaluation will consist of ~~four~~ various levels of performance including but not limited to:

(a) through (4) remain the same.

(a) a total of three "needs to improve" evaluations in any one specific category or a total of any two "not acceptable" evaluations will result in a corrective action plan, or could result in immediate dismissal from the ~~basic course~~ Law Enforcement Officer Basic Course by the academy administrator or the academy administrator's designee.

(5) A copy of the performance evaluation criteria and a written summary of a student's performance evaluation will be provided to the student and to the student's agency administrator ~~when applicable, and to any potential employer who inquires.~~ ~~A copy will be kept on file in the student's record maintained by the academy administrator.~~

AUTH: 44-10-202, MCA

IMP: 44-10-202, MCA

RATIONALE AND JUSTIFICATION: This amendment is reasonably necessary to clarify the MLEA's role in evaluating student performance measures. The department believes students should be evaluated on an objective basis, rather than a subjective basis. Based on past experience, the factors that are being deleted from this rule required a subjective evaluation, rather than an objective evaluation. These changes are intended to provide more flexibility in creating and conducting meaningful and accurate performance evaluations.

23.12.1413 MLEA MONTANA LAW ENFORCEMENT ACADEMY FIREARMS PERFORMANCE REQUIREMENTS FOR THE LAW ENFORCEMENT OFFICER BASIC COURSE (1) A student must achieve a passing score in the MLEA Montana Law Enforcement Academy firearms training course.

(2) The total accumulative points possible for the firearms training course shall be determined by the academy administrator or the academy administrator's designee. ~~filed with the POST advisory council in conjunction with the annual review of the curriculums as prescribed in ARM 23.14.416(3).~~

AUTH: 44-10-202, MCA

IMP: 44-10-202, MCA

RATIONALE AND JUSTIFICATION: This rule is reasonably necessary to remove the language requiring the MLEA to file with POST. POST has no oversight responsibilities regarding MLEA admission requirements and preservice applicants, and thus, there is no need for MLEA to file the points for the firearms training course with POST.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Matt Cochenour, Department of Justice, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401; telephone (406) 444-2026; Montana Relay Service 711; fax (406) 444-3549; or e-mail mcochenour2@mt.gov, and must be received no later than 5:00 p.m., on January 23, 2014.

5. Matt Cochenour, Department of Justice, has been designated to preside over and conduct this hearing.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by the department.

7. An electronic copy of this proposal notice is available through the department's web site at <https://doj.mt.gov/agooffice/administrative-rules>. The department strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Matthew T. Cochenour
Matthew T. Cochenour
Rule Reviewer

/s/ Tim Fox
Tim Fox
Attorney General
Department of Justice

Certified to the Secretary of State December 16, 2013.